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In re Application of	:
MANSOUR et al.	:
Serial No.: 09/744,793	:
PCT No.: PCT/US99/17422	: DECISION ON PETITION
Int. Filing Date: 30 July 1999	:
Priority Date: 30 July 1998	: UNDER 37 CFR 1.137(b)
Attorney's Docket No.: 702-449	:
For: LOW TEMPERATURE OXYGEN GAS SENSOR	:

This is a decision on applicants' "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)", which is being treated as a request to withdraw the holding of abandonment in the above referenced application. The petition was filed on 11 February 2002 in the United States Patent and Trademark Office (USPTO) and is treated as a petition under 37 CFR 1.182. A petition fee of \$130 is required.

#### BACKGROUND

On 27 February 2001, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants indicating that the oath or declaration (unexecuted), filed with the national stage filing, was not in compliance with 37 CFR 1.497(a) and (b). A Notification of Defective Oath or Declaration (Form PCT/DO/EO/917) accompanied the 905 indicating that the oath or declaration was not executed in accord with 37 CFR 1.66 or 1.68. A one month period of time was set to respond to the Notification.

On 25 April 2001, applicants responded to the Notification of Missing Requirements with an executed declaration, a \$55 surcharge representing the small entity fee for filing the declaration after the thirty month period and a request for a one month extension of time and fee,

which is granted. The response correctly identified the inventor's name, international filing date and title of invention and attorney docket number associated with 09/744,793. However, the response incorrectly identified the U.S. serial number as 09/486,301. This response was filed in application 09/486,301. The declaration, which accompanied the response, referenced international application no. PCT/US99/17422 and bore the attorney docket number for application no. 09/744,793.

On 05 October 2001, applicants filed a status request. In an office action dated 21 November 2001, applicants were advised that application no. 09/744,793 was abandoned for failure to respond to the 27 February 2001 Notification of Missing Requirements.

On 11 February 2002, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicants indicating that applicants had failed to respond to said Notification of Missing Requirements.

On 11 February 2002, applicant submitted the instant petition to revive, treated as a petition under 37 CFR 1.182, with a copy of the declaration allegedly deposited on 25 April 2001 and an explanation that the response filed on 25 April 2001 referenced the incorrect U.S. serial number 09/486,301. The petition is considered a request to withdraw the holding of abandonment and to correct the incorrect serial number as listed on the response to the Notification of Missing Requirements. The required \$130 petition fee will be charged to applicant's deposit account per their authorization.

### DISCUSSION

A review of the USPTO application file for 09/744,793 reveals that Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants on 11 February 2001.

A review of the finance records for 09/486,301 indicates that the surcharge for filing the declaration after the thirty month period (\$65) was paid on 25 April 2001. Upon a review of the application file for 09/486,301, the declaration for 09/744,793 was located. The declaration was dated-stamped by the USPTO on 25 April 2001. Accordingly, it is appropriate to docket the declaration in 09/744,793 with a deposit date of 25 April 2001.

Thus, the renewed petition under 37 CFR 1.137(b) is considered moot, as a declaration executed by the inventors was submitted in response to the 27 February 2001 Notification of Missing Requirements.

With regard to the acceptance of the declaration, the declaration submitted on 25 April 2001 identifies each inventor and states the citizenship, residency and mailing address of each of the inventors. However, the declaration contained two identical sheets of page 2. Each page is signed by different inventors. Thus, the declaration is not properly executed. It appears that either the attorney pieced together two separate complete declarations into one composite declaration or the inventors were presented with an incomplete declaration. What is required is one declaration where all inventors have signed or two separate complete declarations. Thus, the requirements of 37 CFR 1.497 have not been met.

### CONCLUSION

For the reasons stated above, the petition to revive under 37 CFR 1.137(b) filed 11 February 2002 in the above-captioned application is **DISMISSED AS MOOT**.

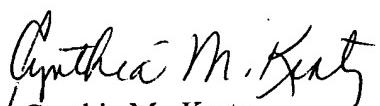
The 11 February 2002 Notification of Abandonment (Form PCT/DO/EO/909) is hereby **VACATED**.

The petition under 37 CFR 1.182 is **GRANTED**. However, as discussed above, the declaration as submitted is unacceptable under 37 CFR 1.497.

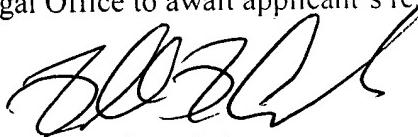
It is noted that the time within which to respond to the Notification of Missing Requirements (Form PCT/DO/EO 905) mailed on 27 February 2001 has expired. Applicant must correct the above-noted defects including the furnishing of an oath/declaration in compliance with 37 CFR 1.497 within **ONE (1) MONTH** from the mail date of this Decision. No extensions of time may be obtained under 37 CFR 1.136(a). Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.497."

Any further correspondence with respect to this matter should include a cover letter entitled "Renewed Request Under 37 CFR 1.497" and be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

The application will be held in the PCT Legal Office to await applicant's response.



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